

(1970) 08 PAT CK 0005
In the Patna High Court
Case No : Criminal Rev. No. 981 of 1969

Raghunandan Yadav and Others

APPELLANT

Vs

The State of Bihar

RESPONDENT

Date of Decision : 31-08-1970

Acts Referred:

Penal Code, 1860 (IPC) — Section 147, 148, 323, 324

Citation : (1971) PLJR 124

Hon'ble Judges : M.P. Verma, J

Bench : Single Bench

Advocate : S.B. Sanyal and Choudhary S.N. Misra, for the Appellant; R.N. Bhagat, for the Respondent

Final Decision : Allowed

Judgement

M.P. Verma, J.—There are 14 petitioners in this case. Petitioners 1 to 13 have been convicted u/s 147 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for one month each. They have also been found guilty for an offence u/s 323 of the Indian Penal Code and sentenced to suffer rigorous imprisonment for fifteen days each. Petitioner no. 14 Rameshwar Yadav has been convicted u/s 148 of the Indian Penal Code and sentenced to undergo rigorous imprisonment for three months. He has also been found guilty u/s 324 of the Indian Penal Code, and sentenced to suffer rigorous imprisonment for three months. This order of conviction and sentence was passed by the learned Sessions Judge of Saharsa on appeal, after reducing the sentences passed against the petitioners by the learned Munsif Magistrate. The short facts of the case are as follows:-

On 20th November, 1965, these petitioners and one Babunandan Yadav (since deceased) appeared before the first informant, who was ploughing plot no. 3600, appertaining to khata no. 23, in village Parikonch. P.W. 3 Gosain Yadav was also helping P.W. 1 Khusilal Yadav in ploughing. The accused were armed with pharsa and lathi, and they asked the informant not to plough the land as the same

belonged to them. The informant insisted that it was his land and he will not leave ploughing. In this altercation, P.W. 2 Dhaniklal Yadav wanted to intervene, whereupon accused Rameshwar ordered assault and he himself gave a pharsa blow on the head of Dhaniklal. The other accused persons also assaulted him with lathis. The informant and his ploughman, Gosain, were both assaulted by the accused persons went away. The injured were then taken to Kishanpur State Dispensary where they were treated and medically examined. The fardbayan of the informant was recorded by the Assistant Sub-Inspector of Kishanpur Police Station and thereafter the case was investigated, after conclusion of which charge sheet was submitted against the accused. They were tried in the first instance by a learned Munsif-Magistrate of Supaul, who found them guilty and sentenced them to various terms of imprisonment. On appeal, the learned Sessions Judge of Saharsa upheld the convictions, but reduced the sentences as mentioned above.

2. Mr. S.B. Sanyal, learned Counsel for the petitioners has urged that it is a case in which the inference drawn from the facts is vitiated because of wrong interpretation. When there is a concurrent finding on facts by two courts, ordinarily, the High Court, in its revisional jurisdiction, should not disturb that finding, unless there are some glaring mistakes or mis-appreciation of facts, on the face of it. His second argument has been that the lower court was very much influenced by a petition filed by the defence for restoration of the land under the provisions of Kosi Area Lands Restoration Act, 1951. The argument is that, if the defence was in possession of the land, there was no necessity to file this petition for restoration of the land, and, ipso facto, it meant that the defence was not in possession. Learned Counsel has argued that it was a very important aspect of the matter, and accused Raghunandan Yadav ought to have been given a chance to explain this petition when he denied that he had filed the same. No question to that effect was asked from him when he was being examined u/s 342 of the Code of Criminal Procedure. It is particularly desirable that any circumstance appearing against an accused must be put to him in order to get his explanation about the same and then any inference can be drawn because of that circumstance or fact. He has vehemently argued that this has caused great prejudice to his clients. I may have remanded the case on this point, or should have ignored this fact appearing against the defence. But, in view of the order that I propose to pass in this case, I do not think this step is necessary. It is clear that both parties were claiming the land as purchasers. It is said that the land belonged to Khusilal, son of Adhiklal Yadav. It was sold in rent execution and purchased by Ramphal Yadav, who again sold it to Khusilal on 30th January, 1964 as per Ext. 3. Khusilal had sold the land to the informant, who is Khusilal, son of Rasik Lal Yadav. On behalf of the defence it is said that as far back as on 19th May, 1927, the land was purchased from Khusilal by Lala Yadav, father of accused Raghunandan and Babunandan (Vide Ext. B). Thereafter, these persons were coming in possession and dealt with this property. Even in 1950, Raghunandan sold 1 bigha 4 kathas of this land to Prem Lal under registered sale

deed dated the 11th January, 1950. But this land, perhaps, did not appertain to this very khata. It further appears that the sale deed in question was not proved, though it is on the record. Learned Counsel for the petitioners has shown to me the recent survey parcha concerning this plot which stands in the name of his client, Raghunandan. This parcha was not produced in the court below. So, it is clear that both the parties have got bona fide claim to this land and they were agitating for the same. But the matter cannot rest there.

It is said that the informant was ploughing the land and there was a protest and attack was made by the accused persons. But the entire matter has not been placed before the court in this case. There was a counter-case also in which the allegation was that Raghunandan was attacked. P.W. 7, in Paragraph 20 of his deposition, has admitted this fact and said that Raghunandan got a lathi blow on his head, but he could not say who gave that blow. So, if both sides had received injuries in the same occurrence, the prosecution should explain as to in what manner the injuries were caused to the accused persons. Unless this is done, the true story has not been placed before the court. In the case of (1) Mohar Rai and Bharath Rai Vs. The State of Bihar, , it was observed that the prosecution had a duty to explain those injuries. Their Lordships further observed "Under these circumstances, we are unable to agree with the High Court that the prosecution had no duty to offer any explanation as regards those injuries. In our judgment, the failure of the prosecution to offer any explanation in that regard shows that the evidence of the prosecution witnesses relating to the incident is not true or at any rate wholly true. Further those injuries probabalise the plea taken by, the appellants. "Even before this decision, a case had come before the High Court of Travancore-Cochin in Sebastian David V. Sirkar (A.I.R. 1950 Tra-Cochin 9) in which it was observed that "when there are injuries on both sides (accused and the complainant), the prosecution must cogently explain how the accused sustained injuries. Without such explanation, the prosecution evidence will not be complete and no court will be prepared to act on evidence which leaves a lacuna."

The counter-case, I am told, is still pending. The best course, in the circumstances, would have been to hear both these cases together, and, in that situation, the Court must have got a complete picture about the occurrence as alleged by the prosecution as also as alleged by the defence. If Raghunandan was first attacked, then he had the right of private defence of person and he could give some injuries to the other side. If he was attacked later, the matter may be different. The learned Judge has mentioned that this plea of private defence had not been specifically taken and so it need not be considered. But, it may be pointed out that it is not necessary that the right of private defence must be specifically pleaded. It can be alternatively taken with the plea of alibi also. The appellate court can examine the circumstances, and if it finds that there is some evidence about the right of private defence of body or property, it can take that plea into consideration. This observation had been made in a number of cases, and I may refer to (2) Janki Mahto Vs. Emperor, , (3) In Re: Jogali Bhaigo Naiks and Another, , (4) King-Emperor Vs. Kishen Lal and others and (5) T. Alibi

Vs. Government of Mysore, . The injuries, alleged to have been inflicted by the accused persons is not at all serious, Dhaniklal had got two injuries, but the report of the doctor would indicate that it might be only one injury and the other injury was the continuation of the first injury. Janki and Khusilal had minor lathi injuries. So, it could be said that Raghunandan had exceeded the right of private defence when he was assaulted first. But nothing can be assumed in this case in view of want of evidence as to which side was the aggressor. In such circumstances, I see no justification to hold these petitioners guilty of the offences alleged.

The result is that this application is allowed, the order of conviction and sentence passed against the petitioners is set aside and they are acquitted. They will now stand discharged from their bail bonds.